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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re Q.A., a Person Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. A.B., Defendant and Appellant.	D075440 (Super. Ct. No. EJ4237)

APPEAL from an order of the Superior Court of San Diego County, Gary M. Bubis, Judge. Reversed.

Elena S. Min, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, Caitlin E. Rae, Chief Deputy Counsel, and Tahra Broderson, Senior Deputy County Counsel, for Plaintiff and Respondent.

A.B. (Father) appeals from a juvenile court order at a six-month review hearing finding that reasonable family reunification services were provided to him as to his son, Q.A. Father, who was incarcerated in Florida until one day before the six-month review hearing, contends the San Diego County Health and Human Services Agency (Agency) did not satisfy its statutory duty to offer or provide reasonable services. In particular, Father claims the Agency did not identify services available at each of the correctional facilities in which he was incarcerated, arrange for him to participate in such services, facilitate telephonic visitations with Q.A., or maintain regular contact with him to monitor his progress towards reunification. The Agency does not dispute these facts. In fact, the Agency claims it never knew the court had ordered reunification services for Father because the social worker assigned to the case was not present at the hearing during which the court ordered services. Nevertheless, the Agency contends that it *still* provided reasonable services to Father because it mailed him a parenting packet and, furthermore, Father could have pursued services without the Agency's assistance.

We agree with Father. Although the social worker did not attend the hearing during which the juvenile court ordered services for Father, county counsel attended and represented the Agency's interests at the hearing in question and, therefore, had actual knowledge of the court's order. As for the merits of Father's appeal, the Agency's mailing of a single parenting packet, just two months before the six-month hearing, does not reflect a good faith commitment to implement a plan of family reunification. Further, Father cannot be blamed for the Agency's shortcomings, given that the burden of offering and providing services rests with the Agency.

For all these reasons, we conclude that substantial evidence did not support the reasonable services finding. Therefore, we reverse.

I

BACKGROUND

On February 6, 2018, the Agency filed a dependency petition under Welfare and Institutions Code section 300, subdivision (b)[1] as to two-year-old Q.A. after receiving reports that he had sustained physical abuse. An amended petition was filed under section 300, subdivisions (b) and (e), and Q.A. was detained in the home of a relative. The amended petition alleged that Q.A., who had resided with his mother (Mother) and her boyfriend,[2] suffered or was at substantial risk of suffering serious physical harm or illness, and was under the age of five and had suffered severe physical abuse by a parent, or by a person known by the parent, and the parent knew or reasonably should have known of the physical abuse. Father had no relationship with Q.A. and was incarcerated in Florida on burglary and drug charges with an expected release date of May 3, 2019.

The social worker assigned to Q.A.'s case mailed a letter to Father at the correctional facility in which he was incarcerated, notifying him about the upcoming jurisdiction and disposition hearing and providing contact information for an attorney available to represent him in the dependency proceeding. The social worker did not

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1 All further statutory references are to the Welfare and Institutions Code.

2 Mother has not appealed any orders of the juvenile court. Accordingly, we reference facts regarding Mother only to the extent they are relevant to Father's appeal.

receive a response. However, on March 28, 2018, the social worker called and spoke over the telephone with Father. Father was aware of the dependency proceeding and requested counsel. Father told the social worker he was "100 percent sure" he was Q.A.'s biological father, planned to return to San Diego after his release from prison, and wanted to build a relationship with Q.A., but required "assistance" to figure out "what he need[ed] to do to be part of his son's life."

At the jurisdiction and disposition hearing, the juvenile court appointed counsel for Father, granted Father's request for voluntary services, and ordered crisis intervention, case management, counseling, and transportation services for Father. Further, the court ordered the Agency to provide Father a $25 phone card per month to call Q.A., so long as Q.A.'s caregiver agreed to accept the calls. At a continued jurisdiction and disposition hearing, the court found the allegations of the petition to be true, declared Q.A. a dependent of the court, and removed Q.A. from Mother's custody.

A paternity test revealed a 99.9 percent statistical probability that Father was Q.A.'s biological father and the juvenile court therefore scheduled a special paternity hearing. In advance of the special paternity hearing, the Agency filed an addendum report requesting reunification services for Father and recommending elevation of Father's status to biological father. The addendum report stated that the social worker had reviewed the services available at the correctional facility in which Father was incarcerated and those services included narcotics/alcohol anonymous groups, individual counseling, and reentry programs. Further, the addendum report stated the Agency

would provide Father a monthly phone card, a parenting packet, and service recommendations.

The addendum report included a proposed case plan with three service objectives for Father. The first objective called on Father to "[s]how [his] ability and willingness to have custody" of Q.A. by maintaining regular contact with Q.A., looking into services to strengthen his parenting, self-sufficiency, and reentry skills, and providing the social worker a letter explaining steps by which he could demonstrate his commitment to Q.A. The second objective required Father to "[d]evelop positive support systems with friends and family" by providing the social worker a list of supportive family and friends who were willing to become part of his safety net upon release. The final objective forbade Father from breaking the law and required him to avoid arrests and convictions.

The proposed case plan identified several "client responsibilities" for Father, such as researching services that would help him to accomplish his service objectives, completing and returning a parenting packet, and completing a parenting program upon his release. The proposed case plan stated that the Agency, for its part, would provide Father a monthly phone card for calling Q.A., and contact Father on a monthly basis to discuss his concerns, provide updates on Q.A., and review Father's participation in services. Father did not sign the proposed case plan and there is no indication in the record that the Agency reviewed the proposed case plan with him.

The juvenile court held the special paternity hearing on August 23, 2018, with county counsel (representing the Agency), Father's counsel, Mother's counsel, and Q.A.'s

counsel in attendance.[3] The court elevated Father's status to biological father, found the case plan appropriate, ordered reunification services for Father, and ordered Father to comply with the case plan. The court also ordered reasonable supervised visitation for Father while he remained in custody and liberal supervised visitation upon his release from custody. Thereafter, Father's counsel informed the court that Father had been transferred to a different correctional facility. There is no indication in the record whether Father's counsel advised the court about the specific address or name of the correctional facility to which Father had been transferred. However, Father's attorney later provided Father's change of address information to the social worker.

The social worker did not attend the special paternity hearing. Further, the juvenile court inadvertently failed to memorialize its order requiring services for Father in the written minute order issued following the special paternity hearing. Notwithstanding the fact that the Agency was represented by county counsel at the special paternity hearing during which reasonable services were ordered, the Agency has maintained, both in the juvenile court and on appeal, that the court's clerical omission led it to believe that the court had not ordered reunification services for Father and, on the contrary, had exercised its discretion not to order reunification services.

On October 5, 2018, the social worker mailed Father a parenting packet, postage paid envelopes for him to return the completed parenting packet, and a letter informing him a new social worker would be assigned to the case. The social worker mailed these

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[3] A certified legal intern appeared at the hearing on behalf of the Agency, under the supervision of deputy county counsel.

materials to Father in "Lake City, Florida," where the correctional facility to which Father had been transferred shortly before the special paternity hearing was located. However, the record does not indicate the specific address to which the social worker sent the materials. The materials were returned to the social worker as "undeliverable" for reasons that are not apparent from the record. A new social worker transitioned onto the case and, in December 2018, sent Father a second parenting packet. The record does not indicate the specific address or city to which the social worker sent the second parenting packet. The social worker received no response from Father.

On January 10, 2019, at the six-month hearing, Father's counsel informed the juvenile court that she intended to contest whether reasonable services had been provided to Father, at which point the court and county counsel expressed doubt as to whether the court had ordered services for Father. The court opined that it did not believe Father had asked for services or that the court had ordered services. Likewise, county counsel stated that it was uncertain whether the court had ordered services for Father. Due to this confusion, the court ordered the court reporter to send all parties a transcript of the special paternity hearing and continued the six-month hearing to February 21, 2019. On February 20, 2019, one day before the continued six-month hearing, Father was released early from custody.

At the continued six-month hearing, the Agency acknowledged, as made clear by the reporter's transcript, that the juvenile court had ordered reunification services for Father, but noted that the court's written minute order did not memorialize the court's oral order. Due to the "confusion on the Agency's end regarding whether the Father was

receiving services," the Agency recommended six additional months of reunification services for Father. Nevertheless, the Agency recommended that the court find the Agency had offered reasonable services to Father during the previous six months. The Agency argued that it had provided reasonable services to Father, even though it professed "confusion" as to whether it was under an obligation to do so, because it had sent Father the parenting packet in December 2018, which he did not complete and return. The Agency also emphasized that in-person visitation would not have been possible due to Father's out-of-state incarceration, Father could have proactively communicated with the Agency (but did not), and Father could have accessed services on his own while in custody (but did not).

Father opposed the Agency's position that reasonable services had been offered or provided on grounds that the Agency had not identified services available to Father in custody or assisted him in arranging access to services. Father also argued the Agency had not spoken to him about his progress with the case plan or facilitated telephone calls with Q.A. Further, Father claimed there was no evidence indicating whether the Agency had ever sent Father a phone card or whether it had included postage paid envelopes when it sent the second parenting packet to Father in December 2018.

The court accepted the Agency's recommendations, ordered six additional months of reunification services for Father, found that the Agency had offered Father reasonable services, and found that Father had not made substantive progress with his case plan. The court found, notwithstanding its clerical omission and the Agency's purported lack of knowledge regarding the reunification services order, that the Agency had offered

reasonable services because it had sent Father the parenting packet in December 2018. Further, the court opined that Father had an "affirmative duty to seek out services" and there was no indication in the record that Father had been unable to obtain services for himself.

Father appeals the order finding that reasonable services were provided to him.

II

ANALYSIS[4]

A. *Background*

"At the outset of a dependency proceeding, the emphasis is on preservation of the family due to the strong fundamental interest parents have in the care, custody, management and companionship of their children, which is recognized as 'a compelling one, ranked among the most basic of civil rights.' " (*D.T. v. Superior Court* (2015) 241 Cal.App.4th 1017, 1034.) Accordingly, "[w]hen a child is removed from a parent's custody, the juvenile court ordinarily must order child welfare services for the minor and the parent for the purpose of facilitating reunification of the family." (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 843; § 361.5, subd. (a)(1).)

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4 Father is an aggrieved party who may appeal the juvenile court's order, even though he received six additional months of reunification services. The juvenile court's order places Father at a significant procedural disadvantage in the dependency proceeding because, at the 12-month hearing, the court must consider whether reasonable services were provided when determining Q.A.'s placement (§ 366.21, subd. (f)(1)) and whether to continue services to 18 months (§ 366.21, subd. (g)(1)). (*In re T.G.* (2010) 188 Cal.App.4th 687, 695-696 (*T.G.*).)

The public policy favoring preservation of the family through development of a reunification plan applies even when a parent is incarcerated. (*Christopher D. v. Superior Court* (2012) 210 Cal.App.4th 60, 69; *In re M.R.* (2017) 7 Cal.App.5th 886, 896 [" 'There is no "Go to jail, lose your child" rule in California.' "].) Thus, section 361.5, subdivision (e) provides that family reunification services must be provided when a parent is incarcerated, "unless the court determines, by clear and convincing evidence, those services would be detrimental to the child." "In determining the content of reasonable services, the court shall consider the particular barriers to an incarcerated . . . parent's access to those court-mandated services and ability to maintain contact with his or her child, and shall document this information in the child's case plan." (§ 361.5, subd. (e)(1).) Reunification services for incarcerated parents may include, but are not limited to, telephone calls, transportation services, visitation services, and counseling, parenting classes, or vocational training programs, if access is provided. (*Ibid.*)

The agency " 'must make a good faith effort to develop and implement a family reunification plan. [Citation.] "[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult . . . ." ' " (*T.G., supra,* 188 Cal.App.4th at p. 697.) "Reunification services need not be perfect. [Citation.] But they should be tailored to the specific needs of the particular family." (*In re Alvin R.* (2003) 108 Cal.App.4th 962,

972.) In reviewing a finding that reasonable services have been offered, we apply a substantial evidence standard of review, reviewing the record in the light most favorable to the juvenile court's order and drawing all reasonable inferences from the evidence in support of affirmance. (*In re M.F.* (2019) 32 Cal.App.5th 1, 14.)

B. *Application*

Father contends he was not offered or provided reasonable reunification services, as evidenced by the fact that the Agency halted virtually all communications with Father after the special paternity hearing at which reunification services were ordered, did not attempt to comply with the case plan it had prepared for Father, did not attempt to facilitate telephonic visitation between Father and Q.A., and made no effort to identify services available to Father at the correctional facility to which Father had been transferred shortly before the special paternity hearing. We agree.

Before we address the merits of Father's arguments, we note, as a preliminary matter, that there is no merit to the Agency's claim that it was unaware the juvenile court had ordered services for Father. It is true that the initial social worker assigned to the case, who later transitioned off the case, did not attend the special paternity hearing during which services were ordered. It is also true that the juvenile court did not memorialize its oral order into a written minute order. However, the record establishes that county counsel—which represents the Agency's interests in this dependency proceeding (§ 318.5)—attended the special paternity hearing in question. Thus, county counsel had actual knowledge of the juvenile court's order and, therefore, any inaction on the Agency's part cannot be attributed to the juvenile court's clerical omission.

Proceeding to the merits of the appeal, it is apparent the social worker initially assigned to the case prepared a thorough proposed case plan that, at the time of its creation, was appropriate. However, according to Father, the Agency never reviewed the proposed case plan with him, and there is no indication in the record that it did.[5] Father also did not sign the designated portion of the proposed case plan indicating that he had participated in its development, had received the proposed case plan, and agreed to its terms. It is difficult to conceive of how, if at all, Father could have made substantive progress on a case plan intended to promote reunification, nor how he could have taken meaningful steps towards reunification, where it appears from the record that he may never have known the contents of the plan. (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1165-1166) [reversing reasonable services finding where "the social worker apparently never reviewed [father's] plan with him"].)

Even if the Agency had directed us to evidence in the record establishing that it reviewed the case plan with Father, there is no evidence the Agency monitored Father's progress towards reunification or compliance with the case plan. The Agency contacted Father just four times throughout the dependency proceeding—once to inform him about

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[5] The Agency claims the social worker discussed the proposed case plan with Father during her preliminary interview with Father on March 28, 2018. However, the Agency provides no citation to evidence in the record supporting its argument and we have found no such evidence on our independent review of the record. Quite the opposite. The addendum report prepared by the social worker relayed the content of the March 28, 2018 telephone call in detail, but does not state that the social worker discussed the proposed case plan with Father. In the absence of a record citation, we do not consider the Agency's unsupported statement that it reviewed the proposed case plan with Father. (*Fierro v. Landry's Restaurant Inc.* (2019) 32 Cal.App.5th 276, 281, fn. 5.)

the jurisdiction and disposition hearing, once for the preliminary interview, once to request his consent for Q.A. to receive a medical treatment, and once when it mailed him a parenting packet in December 2018 after the original parenting packet was returned as "undeliverable."[6] These sporadic contacts, only two of which occurred after the court ordered reunification services, fell far short of satisfying the Agency's duty under the case plan to contact Father each month to discuss his concerns, provide updates on Q.A., and review his participation in services. Further, they do not reflect a good faith effort to "maintain reasonable contact" with Father during the reunification period. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1012 (*Mark N.*) [substantial evidence did not support reasonable services finding where "the department failed to maintain reasonable contact with the father during a significant portion of the reunification period."].)

The Agency urges us to uphold the reasonable services finding on grounds that the social worker identified services available at Father's initial correctional facility. However, as noted, Father transferred correctional facilities prior to the special paternity hearing during which the juvenile court ordered reunification services. The Agency did *not* identify services available at Father's second correctional facility, where he was

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6 There is substantial evidence to support the juvenile court's finding that the Agency mailed the second parenting packet to Father, as the Agency submitted stipulated testimony from the second social worker assigned to the case at the continued six-month hearing indicating that she had "sent a second [parenting] packet to the father [after] the first packet was returned to the Agency." However, the record does not indicate why the first parenting packet was returned as "undeliverable" or which address the social worker used to send the second parenting packet, thus leaving open the possibility that Father might not have *received* the second parenting packet.

placed during the key six-month period in which services were supposed to be provided. Thus, whatever steps the Agency may have taken at the outset of the case, it "made *no* effort to determine whether any services were available or could be provided" to Father *after* services were ordered. (*Mark N., supra*, 60 Cal.App.4th at p. 1013; *In re Maria S.* (2000) 82 Cal.App.4th 1032, 1040 [reversing reasonable services finding where "the record [was] devoid of any evidence to suggest what services, if any, were identified as available or offered to appellant during her incarceration."].) The Agency's failure to investigate services at Father's second correctional facility is particularly troubling, given that Father implored the Agency for "assistance with [determining] what he need[ed] to do to be part of his [son's] life."

The Agency claims Father was as capable as the Agency of identifying services available in custody because he was "onsite at the facility." Had Father known the contents of his case plan, perhaps he could have investigated and participated in services in an informed manner. However, as noted *ante*, there is no evidence in the record indicating that the Agency reviewed the case plan with Father. In any event, "[s]ection 361.5, subdivision (a), places *on the* [*A*]*gency* the duty to provides services to the parent 'for the purpose of facilitating reunification of the family'; the discharge of this duty obviously entails the preliminary task of identifying services available to the parent. By requiring [Father] to perform this preliminary task [at his second correctional facility], the [Agency] evaded its statutory obligation to provide reunification services." (*In re Monica C.* (1995) 31 Cal.App.4th 296, 307-308, italics added.)

We are also concerned by the uncontested fact that the Agency did not facilitate telephonic visitations with Q.A. " 'Visitation is a critical component, probably the most critical component, of a reunification plan.' " (*T.G.*, *supra*, 188 Cal.App.4th at pp. 696-697; *In re Dylan T.* (1998) 65 Cal.App.4th 765, 770 ["[A]bsent certain circumstances, visitation must be provided to the incarcerated parent."].) In the present case, Father's case plan required the Agency to "provid[e] [Father] with a monthly phone card to have telephonic contact with his child and the care provider." Further, the juvenile court ordered "reasonable supervised visitation" at the special paternity hearing and, despite the practical obstacles to in-person visitation arising from Father's out-of-state incarceration, "encouraged" alternative forms of visitation between Father and Q.A.

Despite the court order and case plan provisions, there is no evidence that the Agency took a single step to facilitate telephonic visitation with Q.A. For instance, there is no evidence the Agency provided Father a phone card. There is no evidence the Agency consulted with Q.A.'s caregiver to arrange telephone calls. And there is no evidence the Agency contacted either of Father's correctional facilities to identify methods of communication available to Father or potential restrictions on Father's ability to communicate with Q.A. The Agency's failure to take any of these steps is inconsistent with the notion of a good faith effort to promote reunification. (*In re T.W.-1* (2017) 9 Cal.App.5th 339, 347-348 (*T.W.-1*) [reversing reasonable services finding on grounds that department arranged for just one telephone call in six months]; *Mark N.*, *supra*, 60 Cal.App.4th at p. 1009, fn. 5 [reversing reasonable services finding where "the record [did] not reflect the department ever considered visitation at all, or if it did, the basis upon

which the father was denied the opportunity to be in [his daughter's] presence."]; *In re Precious J.* (1996) 42 Cal.App.4th 1463, 1477-1478 [reasonable services not provided where department did not set up a visitation schedule for incarcerated parent].)

The Agency acknowledges there is no evidence in the record that it provided Father a phone card, but argues the blame should fall on Father's shoulders because he "never complained" about his nonreceipt of a phone card. Similarly, the Agency faults Father because he only requested visitation on one occasion, during the social worker's preliminary interview of Father on March 28, 2018. There are multiple possible explanations for why Father might not have "complained" to the Agency about its inadequate services or why he requested visitation on only one occasion. Most notably, there is no indication in the record that Father had any means (e.g., a phone card) to contact the Agency. Additionally, the March 28, 2018 telephone call was the only time the social worker ever called and spoke with Father. But more importantly, "[F]ather was not *required* to complain [to the Agency] about the lack of reunification services as a prerequisite to the [Agency] fulfilling its statutory obligations." (*Mark N.*, *supra*, 60 Cal.App.4th at p. 1014, italics added.) For all these reasons, we reject the Agency's argument that, in the absence of a complaint from Father, it had no duty to make a good faith effort to develop and implement a reunification plan.

We are under no illusions that this will be an easy family reunification. Father apparently had no close or loving relationship with Q.A. before the dependency proceeding and, from the record, it appears he was no closer to developing such a relationship by the time of the six-month hearing. Nevertheless, the difficulties

associated with Father's ability to reunify do not relieve the Agency of its statutory obligation to offer or provide reasonable services. (*T.W.-1*, *supra*, 9 Cal.App.5th at pp. 348-349 ["We acknowledge that the likelihood of reunification with Father may be low. But Father was nonetheless entitled to reasonable services."]; *Mark N.*, *supra*, 60 Cal.App.4th at pp. 1014-1015 ["[T]he department is not excused from offering or providing court-ordered reasonable reunification services because of difficulties in doing so or the prospects of success."].) The Agency did not satisfy that obligation. Accordingly, we conclude that the juvenile court erred in finding that reasonable reunification services were offered or provided to Father.

III

DISPOSITION

The order is reversed.

IRION, J.

WE CONCUR:

McCONNELL, P.J.

NARES, J.